

SENATE BILL REPORT

EHB 2097

As Reported by Senate Committee On:
Law & Justice, January 25, 2018

Title: An act relating to limiting disclosure of information about the religious affiliation of individuals.

Brief Description: Limiting disclosure of information about the religious affiliation of individuals.

Sponsors: Representatives Stanford, Fitzgibbon, Ortiz-Self, Senn, Pettigrew, Jinkins, Kagi, Lytton, Ormsby, Peterson, Pollet, Ryu, Farrell, Santos, Appleton and Macri.

Brief History: Passed House: 2/28/17, 98-0; 1/11/18, 98-0.

Committee Activity: Law & Justice: 1/25/18 [DPA].

Brief Summary of Amended Bill

- Limits an employer from requiring disclosure of an employee's religious affiliation making such requirements an unfair practice and violating Washington's Law Against Discrimination (WLAD).
- Prohibits a public agency and its personnel from using agency resources to disclose an individual's religious affiliation to the federal government; or compile information regarding individual religious beliefs, national origin, or ethnicity for immigration or law enforcement purposes.
- Restricts a local or state law enforcement agency from collecting or using information about an individual's religious affiliation with limited exceptions.
- Exempts personal information about an individual's religious affiliation from disclosure under the Public Records Act (PRA).

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass as amended.

Signed by Senators Pedersen, Chair; Dhingra, Vice Chair; Padden, Ranking Member; Angel, Assistant Ranking Member; Darneille, Frockt and Wilson.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Staff: Melissa Burke-Cain (786-7755)

Background: WLAD. WLAD protects civil rights and ensures that everyone is free from discrimination at work, in housing, in public accommodations, or when seeking credit and insurance. Anti-discrimination laws prohibit employment discrimination based on age; presence of a sensory, mental, or physical disability; opposition to a discriminatory practice; HIV/AIDS and hepatitis C status; race; creed, including religious beliefs; national origin; sex, including pregnancy; marital status; sexual orientation, including gender identity; veterans or military status; and use of a service animal.

Employers that are nonprofit religious organizations or have less than eight employees are exempt from WLAD. A person who alleges employment discrimination under WLAD may file a complaint with Washington's Human Rights Commission (HRC) and seek an administrative remedy. Alternatively, the person may file a civil employment discrimination lawsuit for damages or other remedies in the courts.

Washington State's HRC. Washington established its HRC in 1949. The HRC enforces WLAD's employment anti-discrimination provisions. When a person working for a WLAD-regulated employer believes their employer has discriminated against them, they have six months from the date of the last alleged violation to file a complaint with the HRC.

The HRC investigates the employee's complaint, acting as a neutral fact-finder, and determines whether there is reasonable cause to believe that the employer has committed a WLAD violation. If the HRC finds reasonable cause, and the parties are unable to reach a satisfactory dispute resolution, the complaint may go before an administrative law judge who has the power to hear the matter, enter findings of fact and conclusions of law, and may impose penalties based on an employer's violation.

PRA. Under Washington's PRA all state and local government agencies must make all public records available for public inspection and copying unless a statute expressly exempts the record from disclosure. The courts' interpretations of the PRA applies exemptions narrowly and favors disclosure of records to the public.

A public record is any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. A writing includes traditional written records, but also photos, maps, videos, voicemails, emails, text messages, and tweets.

Summary of Amended Bill: It is an unfair employment practice for an employer to require an employee to disclose their religious beliefs unless the purpose is the employee's request for religious accommodation. It is an unfair employment practice for an employer to require an employee to disclose a co-worker's religious beliefs without the co-worker's express consent and knowledge of the disclosure's purpose.

A state or local government agency or a public employee must not:

- disclose personally-identifiable information about religious affiliation to federal government authorities unless the employee is a crime witness;

- use public funds, facilities, personnel, and resources to participate in creating, implementing, or enforcing a government program that is compiling a list or database about individuals based on religious beliefs for law enforcement or immigration purposes; or
- make personally identifiable information about religious affiliation available from an agency's data or an agency vendor's data to anyone or any entity for a government program compiling a list of individuals based on religious beliefs, national origin, or ethnicity for law enforcement or immigration purposes.

A state or local law enforcement agency must not collect information on the religious affiliation of an individual unless the information is:

- part of a investigation of an individual based on a reasonable suspicion the individual has engaged in criminal activity and the specific information and criminal activity are connected; or
- necessary to provide religious accommodations.

A state or local law enforcement agency must not use public funds, facilities, personnel, or other resources to investigate, enforce, or assist in the investigation or enforcement of:

- any criminal, civil, or administrative violation;
- any warrant for a violation; or
- any federal government requirement that individuals register with the government based on their religion.

Any agreements existing on this bill's effective date making government agency information or data available in conflict with this bill are terminated on that date to the extent of the conflict.

All records that contain personally identifiable information about religious affiliations are exempt from public disclosure under the PRA.

EFFECT OF LAW & JUSTICE COMMITTEE AMENDMENT(S):

- Permits collecting individually identified information about religious beliefs as part of any criminal investigation when there is any nexus between the specific information about religious beliefs and the criminal activity.

Appropriation: None.

Fiscal Note: Not requested.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Engrossed House Bill: No public hearing was held.

Persons Testifying: N/A

Persons Signed In To Testify But Not Testifying: N/A